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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL DIVISION 1028, AMALGAMATED TRANSIT UNION,

Petitioner,

v.

THE CITY OF AURORA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

In its Petition for a Writ of Certiorari, Petitioner, Division 1028, Amalgamated Transit Union (hereinafter, "Union"), presented the only question decided by the court below: whether this Court's purely statutory decision in *Jackson Transit Authority* v. *Local Division 1285, ATU*, 485 U.S. 15, 102 S. Ct. 2202 (1982), stripped the transit union of any future claims it might have for violation of the contract clause of the United States Constitution, U.S. Const., Art. I, § 10. Having decided that *Jackson* had that preclusive effect, the court below never considered the substance of the Union's claim; accordingly, the Union simply requested this Court to vacate and remand to the lower court for such consideration. Respondent, City of Aurora (hereinafter, "Aurora"), never addresses the only issue actually presented here: Does *Jackson* preclude the lower court from considering the Union's claim that Aurora's actions amounted to a violation of the contract clause? As set forth in the Union's Petition for a Writ of Certiorari, this Court's *Jackson* opinion does not, and could not, decide the Union's contract clause claim, a claim which was never presented to this Court. In its summary opinion, the Court of Appeals did not set forth how *Jackson* did so. Aurora has similarly failed to give this Court any inkling of how the lower court's opinion may be sustained. The opinion is indefensible; accordingly, it should be vacated.

Instead of addressing the question at hand, Aurora contends essentially that the Union would not *win* if the lower court were to consider its contract clause claim. Although, strictly speaking, Aurora's argument that it would prevail in a contract clause suit is irrelevant to the issue presented here, the Union will address it briefly.

Aurora contends first that the lower court's decision here is in "conformity with the decision of other circuits [sic] which have denied the same contract clause claim made by the Union, *Local Div. 589, ATU* v. *Massachusetts*, 666 F. 2d 618 (1st Cir. 1981), *cert. den.*, —— U.S. ——, 102 S. Ct. 2948 (1982)." (Brief in Opposition (hereinafter, "Op. Cert.") at 5).

Local Div. 589 involved a transit authority that had been publicly owned and operated since well before the passage of the Urban Mass Transportation Act of 1964, 49 U.S.C. § 1601, *et seq.* When the authority first acquired federal funds in 1974, long-standing state law governed the authority's relationship with its employees. The authority and the transit union entered into a § 13(c) Agreement, which provided:

> . . . b) The collective bargaining rights of employees . . . including the right to arbitrate labor disputes . . ., to the extent such are provided for by applicable laws and/or existing collective bargaining agreements, or otherwise shall be preserved and continued . . . . (§ 4)

Id at 625. The state thereafter enacted legislation substantially inconsistent with the bargaining and arbitration arrangements extant in 1974.

Local Div. 589 decided, primarily, that the supremacy clause of the U.S. Constitution did not, as a matter of federal preemption, prevent the state from legislating about collective bargaining rights, including arbitration, covered by the terms of the 1974 § 13(c) Agreement.[1]

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1. *Local Div. 589* was an appeal from the grant of a preliminary injunction. The Court of Appeals vacated the injunction and remanded. On remand, the District Court granted summary judgment to defendants. The Union's appeal from that ruling on the merits is currently pending before the U.S. Court of Appeals for the First Circuit.

On a motion for rehearing, the Court of Appeals addressed the Union's claim that the change in the Massachusetts legislation violated the contract clause by impairing the § 13(c) Agreement in only the briefest and least enlightening terms.[2] The court characterized the issue as a:

> . . . conflict between state law . . . that takes the form of a specific, clear state statute, directly and purposefully aimed at local transit problems (and an ambiguously worded § 13(c) agreement made several years before).

and ruled that:

> . . . such a statute could not have impaired the obligation of the "contract" (if it was one).

Id., at 646.

This cryptic and fact-hedged "ruling" on appeal from a preliminary injunction establishes little of moment here. Most important, since *Local Div. 589* was decided before *Jackson*, the Court could not have held, as the ruling at issue here would establish, that this Court's ruling in *Jackson* strips the § 13(c) contracts of any contract clause protections. Indeed, this Court's ruling in *Jackson*, that § 13(c) Agreements are "ordinary," "enforceable" contracts (*Id.*, 102 S. Ct. at 2207), directly contradicts any such interpretation of *Local Div. 589*. Accordingly, *Local Div. 589* does not support the ruling here.

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2. The Court had considered at length the Union's claim, not presented here, that the legislation violated the unexpired collective bargaining agreement.

For its second defense, Aurora presents a series of contract clause contentions, which would properly be presented to the lower court after remand. Aurora contends that its resolutions are not "laws" within the meaning of the contract clause and that they merely reflect Aurora's position that "the 1971 § 13(c) Agreement was superseded" in 1980. (Op. Cert. at 6-7). As set forth above, these defenses were not the subject of the ruling below and thus are of no moment here.

The Union would point out merely that: (1) As Aurora admits, it is well-established that the official actions of municipalities can constitute "laws impairing contracts" under the Contract Clause. *See St. Paul Gas Light Co.* v. *St. Paul,* 181 U.S. 142, 148 (1901); *City Ry. Co.* v. *Citizens' Street R. Co.,* 166 U.S. 557, 563; *E & E Hauling, Inc.* v. *Forest Preserve Dist.,* 613 F. 2d 675, 678 (7th Cir. 1980).

(2) The existence of a contract, and whether the defendant's actions are "simple breach[es] of contract" (Op. Cert. at 6) or unconstitutional impairments are all complex questions which must be resolved first by the lower federal courts. *City Railroad Co.* v. *Citizens' Railroad Co.,* 166 U.S. 557, 563 (1897):

> All that is necessary to establish the jurisdiction of the court is to show that the complainant had, or claimed in good faith to have, a contract with the city, which the latter had attempted to impair.

The Court in *City Railroad* went on to hold unconstitutional a city ordinance terminating the contractual right of an existing street railroad to use the city streets for its tracks. *Accord, St. Paul Gas Light Co.* v. *St. Paul,* 181 U.S. 145, 147:

> Where subsequent state legislation is asserted to be repugnant to the Constitution of the United States because such legislation impairs the obligations of a contract, the power to determine whether there be such impairment imposes also on this court the duty, when necessary, to ascertain whether there was a contract and its import.

Recently, in *E & E Hauling, Inc.* v. *Forest Preserve Dist.*, 613 F. 2d 675, 680, n.7 (7th Cir. 1980), the Seventh Circuit ruled that a plaintiff may maintain a federal contract clause claim against an agency of the state despite the existence of a potential state claim for breach. Thus, it is clear that the Seventh Circuit's ruling here rests solely on its mistaken understanding of *Jackson* and not on any notion that this is "merely" a breach of contract suit, as Aurora contends.

(3) Aurora is wrong; the standards set forth under Aurora's own authority, *New Orleans Waterworks Co.* v. *Louisiana Sugar Ref. Co.*, 125 U.S. 18 (1888) (Op. Cert., p. 7), its actions amount to an unconstitutional impairment. As a Home Rule unit under Art. VII, § 6 of the Illinois Constitution, Aurora may "exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Exercising these powers, the Aurora City Council legislated as follows: "any labor Agreement in effect prior to said date [5/19/82] *shall terminate* as of that date and have no further force and effect." R. 82-1160 [emphasis added]. This legislated termination could not be further from Aurora's unsupported, self-serving efforts in its brief to recast its actions as mere disputes over the contract's meaning.

CONCLUSION

For the reasons set forth in the Union's Petition for Certiorari, the Writ should be granted.

Respectfully submitted,

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